

PC RESOLUTION NO. 16-028

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, RECOMMENDING APPROVAL OF A SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021) TENTATIVE TRACT MAP (P-MT13-0008) AND ENVIRONMENTAL ASSESSMENT (P-EA16-0005) TO ALLOW CONSTRUCTION OF 72 RESIDENTIAL CONDOMINIUM UNITS ON 1.794 ACRES IN FIVE, DETACHED, FOUR-STORY STRUCTURES WITH SHARED, UNDERGROUND GARAGE AND ASSOCIATED SITE IMPROVEMENTS AT 91 MONTAGUE EXPRESSWAY(APN 086-34-023)

WHEREAS, an application for a Site Development Permit (P-SD13-0020), Conditional Use Permit (P-UP13-0021), Tentative Tract Map (P-MT13-0008), and Environmental Assessment (P-EA16-0005) was filed by Manou Movassate on December 6, 2013, to amend and replace the prior entitlements to allow the demolition of an existing, vacant structure and for the development of five, four-story, detached structures, connected by a hallway, containing 72 residential condominiums with a one-level, below ground, shared parking area and associated landscaping and site improvements. Maximum building height would be 48 feet and four stories. Site improvements include access from Montague Expressway, pedestrian walkways and landscaping at 91 Montague Expressway, APN 086-34-023.

WHEREAS, the City of Milpitas determined that the project was subject to California Environmental Quality Act (CEQA) and the proposal is exempt under Section 15168(c) of the CEQA Guidelines as it was previously analyzed and mitigated as part of the Milpitas Midtown Specific Plan EIR. See Attachment A to the Conditions of Approval for Mitigation and Monitoring Plan. Per CEQA Guidelines Section 15168(c), projects are exempt from new environmental review if the lead agency can demonstrate the activity as being within the scope of the project covered by a program EIR, and no new environmental effects and no new mitigation measures are required; and

WHEREAS, a duly-noticed public hearing was held by the City of Milpitas Planning Commission on August 10, 2016, on the subject application, at which time all those in attendance were given the opportunity to speak on this proposal; and

WHEREAS, the Planning Commission has considered all of the written and oral testimony presented at the public hearing in making its decision; and

NOW, THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Division conducted an environmental assessment No. EA16-0005 of the Project in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended, and state and local guidelines implementing CEQA. This Project is included within the area evaluated as part of the Midtown Specific Plan Environmental Impact Report (EIR), SCH#2000092027, which was certified by the City Council on March 19, 2002. The Project is covered under the scope of activities approved with that EIR. A finding is made below that this Project is within the program of the EIR and no further environmental review is required. All applicable mitigation measures identified in the Final EIR will apply to the project and have been integrated to the extent applicable in the conditions of approval in Exhibit 1 attached hereto and incorporated herein.

CEQA Finding

The proposed Project is covered under the scope of activities analysed under the Midtown Specific Plan (EIR), SCH#2000092027, which was certified by the Milpitas City Council on March 19, 2002. The EIR included a program of activities that include the construction of up to 2,328 new dwelling units and supporting retail development, new office developments at key locations, bicycle and pedestrian trails linking the areas together, and new parks to serve residential development within the Midtown Specific Plan area. The proposed 72 residential units fall within this scope of development activity since the specific plan area has not reached its full build out.

Further, the Project applicant has submitted a Phase I Environmental Site Assessment, Soil Engineering Study and Liquefaction Analysis, Stage I Noise Report, and Stage I Vibration report to further show consistency with the Midtown Specific Plan EIR. Copies of these documents are on file with the Planning Division and fully incorporated herein by reference. These aforementioned studies do not indicate any Project environmental impacts other than those already analysed in the EIR.

An independent Environmental Assessment memorandum was prepared by LSA Associates under contract to the City of Milpitas concluding that the Project is exempt from further environmental analysis per Section 15168(c) of the California Environmental Quality Act (CEQA). Mitigation measures required of projects covered under the EIR are included as Conditions of Approval. Based on the foregoing, the Planning Commission recommends the City Council finds that the proposed Project will not have additional environmental impacts beyond those identified in the EIR, no additional environmental review is required, and no new or additional mitigation measures are required.

Section 3: ***Tentative Tract Map (Section XI-1-20.01) - The Planning Commission makes the following findings based on the evidence in the administrative record in support of Tentative Tract Map No. MT13-0008:***

1. *The proposed subdivision, its design and improvement are consistent with the General Plan of the City of Milpitas.*

The project has a General Plan land use designation of Multi-Family Residential, Very High Density, with allowable density range of 31-40 units per gross acre. The proposed project is consistent with the land use designation with its dense, multi-family residential use at a density of 40 units per gross acre. Furthermore, the project will encourage the economic pursuits of the City, providing housing opportunities and fostering community pride and growth through development, as illustrated below:

- *2.a-I-119 Use zoning for new residential developments to encourage a variety and mix in housing types and costs.*

By offering a mix of unit sizes (28 one-bedroom units, 26 two-bedroom units, and 18 three-bedroom units), the project creates a variety of new housing opportunities at a range of price points.

- *2.a-I-17 Foster community pride and growth through beautification of existing and future development.*

The project includes the demolition of an older, vacant structure on an underutilized site adjacent to railroad tracks, and the construction of a contemporary, multi-family development that will include extensive landscaping and frontage improvements. It includes a main entrance and façade that incorporates a large courtyard area for visitors and residents, varied roof heights and vertical planes to reduce the appearance of bulk, thoughtful articulation to create shadow lines and avoid large blank walls, and a color palette that will beautify the development and neighborhood generally.

2. *None of the findings set forth in Government Code Section 66474 apply to the proposed project.*

- *The proposed map is consistent with applicable general and specific plans as specified in Government Code Section 65451.*

The proposed map is consistent with the Milpitas General Plan, which establishes the relevant distribution, location, and extent of the uses of land, as documented in finding 1 of Section 3 above. The map is also consistent with the Midtown Specific Plan, in that the project implements the following Midtown Specific Plan policies:

- *Policy 3.4: Establish a minimum density of 21 units per gross acre in the mixed-use district, 31 units per gross acre in the multi-family, very high density area, and a minimum of 41 units per gross acre around the transit stations.*

The project is located within the Multi-Family, Very High Density zoning district and, at 40 units per gross acre, is within the allowable density range of 31-40 units per gross acre for that district.

- *Policy 3.24: Require new residential development to provide public parks at a ratio of 3.5 acres per 1,000 persons, of which up to 1.5 acres per 1,000 persons can be developed as private or common open space.*

As documented in the staff report presented to the Planning Commission on August 10, 2016, the project applicant is meeting this requirement through a combination of private recreation space and the payment of a parkland fee in accordance with City requirements.

- *Policy 4.17: Ensure that new development complies with City of Milpitas Zoning Ordinance requirements for off-street parking. Consider reductions on a case-by-case basis.*

As documented in the staff report presented to the Planning Commission on August 10, 2016, the project is required to provide 130 residential parking spaces and 20 guest parking spaces. The project proposes to provide 130 vehicular parking spaces, 8 motorcycle parking spaces, and 20 guest parking spaces, thus exceeding the minimum requirement.

- *The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.*

The design and improvement of the project is consistent with the Milpitas General Plan as set forth in finding 1 above, and the Midtown Specific Plan as set forth in finding 2 above.

- *The site is physically suitable for the type of development.*

The site is physically suitable for the development of four-story condominium uses in terms of grade, proximity to transit (including the VTA and planned BART stations), underutilized condition, and development potential.

- *The site is physically suitable for the proposed density of development.*

After conducting environmental impact reports pursuant to the California Environmental Quality Act, both the Milpitas General Plan and Midtown Specific Plan have determined that it is appropriate for this site to host a density range of 31-40 units per gross acre. At 40 units per gross acre, the proposed project falls within this density range.

- *The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.*

The design of the subdivision and the proposed improvements are not likely to cause

substantial environmental damage or substantially or avoidably injure fish or wildlife or their habitat given that the site is currently an underutilized lot with a vacant building and does not provide fish or wildlife habitat which will be displaced by its development. Furthermore, the project is consistent with the Midtown Specific Plan FEIR, which includes appropriate mitigation measures, which includes, but not limited to, coordination with appropriate agencies such as U.S. Army Corps of Engineers, California Department of Fish and Wildlife (CDFW), and Regional Water Quality Control Board (RWQCB), if necessary. Staff has determined the project, as proposed is not located within wetlands or waterways (including Penitencia Creek) where substantial environmental damage or avoidable injure to fish or wildlife or their habitat can occur.

- *The design of the subdivision or type of improvements is not likely to cause serious public health problems.*

The design of the subdivision and the type of improvements proposed are not likely to cause serious public health problems given that fire access is subject to review and approval by the City, as are pedestrian and vehicular egress and ingress. In addition, compliance with the conditions of approval set forth in Exhibit 1 hereto will ensure conformance with applicable sanitary sewer, water, and other utility regulations to protect the public and project residents.

- *The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.*

After reviewing the project plans, the City has determined that the design of the subdivision and the type of improvements proposed will not conflict with any easements acquired by the public at large for access through or use of, property within the proposed subdivision. As conditioned, the applicant will dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.

Section 4: Site Development Permit (Section XI-10-57.03) – The Planning Commission makes the following findings based on the evidence in the administrative record in support of Site Development Permit No. SD13-0020:

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The layout of the site, which proposes five, detached, four-story structures with shared underground parking, and the design of the proposed buildings, structures, and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development in that the proposed residences will be of a similar height to the nearby multi-story residential uses, employ building colors and materials in earth tones that complement the color palette of

surrounding residences, vary roof heights and vertical planes in the same manner as nearby uses, and offer rich landscaping (including some 555 new plants) that will continue the greenery along Montague Expressway offered by other developments. Any modifications to approved landscaping plan must be reviewed by the Planning Director to ensure compatibility with existing Montague Expressway area and long-term maintenance of the landscaping.

2. *The project is consistent with the Milpitas Zoning Ordinance.*

The project site is zoned R-4 (Multi-Family Residential, Very High Density). The proposed residential use is permitted in the zoning district. The project conforms to the zoning district and meets the intent for this type of project envisioned in this area. The project's density is within the required thresholds of the R-4 zoning district (40 units per gross acre proposed where 31-40 units per gross acre are permitted). The Midtown Specific Plan provides numerous zoning standards applicable to the project, and the project is consistent with respect to the development standards set out in the Specific Plan district in terms of height (4 stories proposed where 4 are allowed) and setbacks (10 feet proposed for the front yards where 8-15 are permitted, 10 feet proposed for side yard where 10 is permitted, and 10 feet proposed for rear yard setback where up to 18 is permitted), as well as with the City's parking ordinance (158 vehicle and motorcycle spaces provided where 150 residential and guest spaces required) as described in the project's staff report to the Planning Commission and demonstrated in the project plans.

3. *The project is consistent with the Milpitas General Plan.*

See finding 1 made in support of the Tentative Tract Map in Section 3 above.

4. *The project is consistent with the Midtown Specific Plan.*

The project is consistent with the Midtown Specific Plan, as illustrated in finding 2 made in support of the Tentative Tract Map in Section 3 above. Furthermore, the proposed project conforms to the intent and the specific requirements of the Midtown Specific Plan, including the Development Standards and Design Guidelines, as set forth in finding 4 above. Specifically, the project meets the Specific Plan's Development Standards regarding density (40 units du/a proposed, where 31-40 du/a are allowed), height (4 stories proposed where 4 are allowed), and setbacks (10 feet proposed for the front yards where 8-15 are permitted, 10 feet proposed for side yard where 10 is permitted, and 10 feet proposed for rear yard setback where up to 18 is permitted). It also meets the Design Guidelines requirements for vehicle access (providing primary vehicular access from access ways directly connecting to the street), making the off-street parking facility very low-visibility from the street, and articulating the buildings with varying roof heights and vertical planes, among other features.

Section 5: Site Development Permit for Signage (Section XI-10-57.03(F)(2)) – The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD13-0020 for signage:

1. *All elements of signs, including design, lighting, scale, length and materials, are consistent with the intent of the General Plan, the Sign Ordinance and any applicable Specific Plan.*

The project includes one monument sign to be installed at the main entrance, along Montague Expressway. All elements of the sign, including its design, lighting, scale, length and materials, are in conformance with the intent of the General Plan, the design guidelines of the Sign Ordinance, and the Midtown Specific Plan, in that the sign is designed to complement the architectural style and setting of the residences, will be made of high-quality materials, and will be professionally fabricated.

2. *The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves.*

The proposed sign as shown on the project plans provide compatibility of size, location and continuity with the proposed development in the choice of materials, close affiliation between building and sign design, and relative size of the sign relative to the site.

3. *The design and scale of the sign is appropriate to the distance from which the sign is normally viewed.*

The proposed sign, as shown on the project plans, provides visibility and legibility and provides the appropriate relationship of scale and height to the development when viewed from the distance from which the sign will normally be viewed, which is from Montague Expressway.

4. *The design and materials of the sign provide a contrast between the background and letters.*

The proposed design and materials of the sign, as depicted in the project plans, provide contrast between the background and letters by the selection of colors and material use.

Section 6: Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP13-0021:

1. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed project requires a Conditional Use Permit to authorize a condominium residential use. Such a use will not be detrimental or injurious to property or improvements in the vicinity of the project, nor to the public health, safety, and general welfare, given that it is a high density residential use of exactly the type and within the density range envisioned by the Midtown Specific Plan and the General Plan for this location. Development of the project will improve an underutilized site, which will inure to the benefit of surrounding properties.

2. *The proposed use is consistent with the Milpitas General Plan.*

See finding 1 made in support of the Tentative Tract Map in Section 3 above.

3. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

The project site is zoned R-4 (Multi-Family Residential, Very High Density). The proposed residential use is permitted in the zoning district. The project conforms to the zoning district and meets the intent for this type of project envisioned in this area. The project's density is within the required thresholds of the R-4 zoning district. The Midtown Specific Plan provides numerous zoning standards applicable to the project, and the project is consistent with respect to development standards set out in the Specific Plan district in terms of height and setbacks, as well as with the City's parking ordinance as described in the project's staff report to the Planning Commission and demonstrated in the project plans.

4. *The project is consistent with the Midtown Specific Plan.*

See finding 2 made in support of the Tentative Tract Map in Section 3 above.

Section 8: The Planning Commission of the City of Milpitas hereby recommends the City Council approve Site Development Permit, Conditional Use Permit, Tentative Map and Environmental Assessment, subject to the above Findings, and Conditions of Approval attached hereto and incorporated herein as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on August 10, 2016.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on August 10, 2016, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Sudhir Mandal				
Zeya Mohsin				
Gurdev Sandhu				
Ray Maglalang				
Demetress Morris				

EXHIBIT 1

CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021), TENTATIVE TRACT MAP (P-MT13-0008), AND ENVIRONMENTAL
ASSESSMENT (P-EA16-0005) :
91 MONTAGUE EXPRESSWAY, (APN 086-34-023)

GENERAL CONDITIONS

1. General Compliance. The applicant and owner, including all successors in interest (collectively "Permittee") shall comply with each and every condition set forth in this Permit. This Development Permit NO. P-SD13-0020; Conditional Use Permit NO. P-UP13-0021; Tentative Subdivision Map NO. P-MT13-0008; and Environmental Assessment NO. P-EA16 -0005 (collectively "Permit") shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County's Recorder Office and a copy shall be provided to the Planning Department. (P)
2. The Permittee shall develop the approved project in conformance with the approved plans (dated January of 2016), sample color and materials board approved by the Planning Commission, in accordance with these Conditions of Approval. (P)
3. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)
4. Conditions of Approval. As part of the issuance of building permits, the Permittee shall include within the first four pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. (P)
5. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. (ALL)
6. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the development is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, the term of which may be extended upon approval by the City or the filing of a final map, then the term of the permits shall coincide with the life of the map. Pursuant to Section XI-10-

64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement is defined when the project:

- a. Completes a foundation associated with the project; or
- b. Dedicates any land or easement as required from the zoning action; or
- c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

7. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
8. Project Job Account. If the Permittee's project job account is at any time delinquent or below the required deposit amount, the City will not continue to review or process the application until the Permittee's project job account is paid in full and the required deposit has been paid. At the time of application for building permit there is a project job account balance due to the City for recovery of review fees, the review of permits will not be initiated until the balance is paid in full. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(E).**
9. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by any court of competent jurisdiction, such term, provision or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding and fully enforceable.
10. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the Permittee may file a protest has begun under California Government Code Section 66020(d)(1).
11. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies.
12. Certificate of Insurance. Permittee shall provide certificate of insurance and name the City of Milpitas as an additional insured in its insurance policies.
13. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the Project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.

14. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Municipal Code.
15. Conditions. Each and every condition set forth in this Exhibit shall apply to the Project and continue to apply to the Project so long as the Permittee is operating the Project under the permits and approvals in this Resolution.
16. Indemnification. Permittee, and its heirs, successors, and assigns, shall indemnify, defend with counsel of the City's reasonable choosing, and hold harmless City and its City Council, its boards and commissions, officials, officers, employees, and agents (the "Indemnified Parties") from and against any third party claim, action, or proceeding against City and/or the Indemnified Parties to attack, review, set aside, void, or annul the City's approval of SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021) AND TENTATIVE TRACT MAP (P-MT13-0008), including any environmental determination (P-EA16-0005) made therefore. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, reasonable attorneys' fees, and other reasonable expenses incurred in connection with such claim, action, causes of action, suit or proceeding. Permittee shall pay to the City upon demand or, as applicable, on a monthly basis to counsel of City's reasonable choosing, amounts owed pursuant to the indemnification requirements prescribed in this condition, provided each such demand or monthly payment request includes reasonably detailed back-up documentation, including invoices and/or receipts, as applicable, for all amounts to be paid. Notwithstanding the foregoing, City shall have the right to redact invoices and/or receipts as necessary to preserve attorney-client privilege. City shall promptly notify Permittee of any claim, action, or proceeding and shall engage in reasonable efforts to cooperate in the defense. If City fails to so promptly notify Permittee, or if City fails to engage in reasonable efforts to cooperate in the defense, then Permittee's indemnification obligations as set forth in this condition of approval shall thereafter terminate. Permittee shall not be required to pay or perform any settlement unless the settlement is approved by Permittee. The above indemnification is intended to be as broad as permitted by applicable law. To the extent the above indemnification is limited by Government Code Section 66474.9, any limitations shall only apply to SITE DEVELOPMENT PERMIT (P-SD13-0020), CONDITIONAL USE PERMIT (P-UP13-0021), TENTATIVE TRACT MAP (P-MT13-0008), AND ENVIRONMENTAL ASSESSMENT (P-EA16-0005) and the balance of the Permit shall be unaffected by said Government Code section. (CA)
17. Compliance with Fire Department and California Fire Code. The Project shall comply with the requirements of the Milpitas Fire Department and the California Fire Code as adopted by the City. Changes to the site plan and/or building(s) requires review and approval by the Fire Department. (F)
18. Landscape. All approved landscaping shall be permanently maintained and replaced with substantially similar plant material as necessary to provide a permanent, attractive, and effective appearance.

19. Bicycle parking. Permittee shall provide a minimum of ten (10) short-term bicycle parking spaces on the project site.
20. Fire Department access. Fire Department apparatus and staff access shall be provided to all buildings and site. CFC Section 503.
21. A minimum of two independent and approved (by the Fire Code Official) means of fire apparatus access shall be provided. Buildings or facilities exceeding 30 feet (9144 mm), or three stories in height, or 50,000 square feet (5760m²) shall be provided with at least two means of fire apparatus access for each structure. 2012 International Fire Code, Section D104.1, adopted and amended by Milpitas Municipal Code (“MMC”) Section V-300-2.154.
22. Fire apparatus access roads shall meet the Milpitas Fire Department turning radii guidelines and shall provide continuous apparatus travel. Turning radii for fire apparatus access roads shall be a minimum net clearance of 48 feet 6 inches for the outside radius and 28 feet 0 inches for the inside radius. The layout for the outside and the inside radius shall be from the same reference point (centre). California Fire Code Section 503.
23. Fire apparatus access roads shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. International Fire Code, Appendix D, Sections D103.1 and D105, adopted and amended by Milpitas Municipal Code.
24. Fire apparatus access shall extend to within 150 feet of all portions of exterior walls of the building/structure per the California Fire Code Section 503.1. When there is a dead-end condition, means for fire apparatus turn-around shall be provided. The Fire Department reserves the right to request site design changes as needed to meet the requirements of the CFC, and/or make the request for additional fire protection measures in conformance with the CFC Section 102.9.
25. Adjacent Access. No source of access from lands adjoining a property to be developed shall be considered unless there is obtained the irrevocable and unobstructed right to use same. CFC Section 508.3, added by MMC Section V-300-2.48.
26. Fire access roads shall be paved (concrete and/or asphalt cement, no other material is accepted). Fire apparatus access roads/lanes and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. Design criteria shall be based on the City of Milpitas fire apparatus Sutphen S95 Aerial Platform unit. Please contact the Fire Prevention Division for specifications. CFC Section 503.2.3.
27. Ground structures (including landscape) and building projections shall not encroach or impede the fire apparatus access requirements. CFC Section 503.4.

28. Building/structure set back, proximity to fire access roads. At least one of the required access routes meeting the Fire Dept. conditions shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to the entire side of the building. 2012 International Fire Code, Section D105.3, adopted by MMC Section V-300-1.01.
29. Emergency Vehicle Access (EVA) roads, when required, shall meet the fire department site access requirements specified herein these conditions of approval CFC Section 503.
30. No parking in fire access roads. The required access road shall be designated and clearly marked as a fire lane. The designated fire lane shall be identified as set forth in Section 22500.1 of the Vehicle Code. The designation shall be indicated (1) by a sign posted immediately adjacent to, and visible from, the designated place clearly stating in letters not less than one inch in height that the place is a fire lane, (2) by outlining or painting the place in red and, in contrasting color, marking the place with the words "FIRE LANE", which are clearly visible from a vehicle, or (3) by a red curb or red paint on the edge of the roadway upon which is clearly marked the words "FIRE LANE". CFC Section 503.3.

Minimum marking shall be (1) pole signage and (2) red curb with "FIRE LANE" stencil.

31. Buildings with Courtyards. Fire access shall be provided to enclosed courts for fire fighting and rescue operations. Each court shall be designed to provide readily accessible method of bring a fire department ground ladder (36' long) into the courtyard. Permittee shall ensure that project design anticipates and accommodates personnel carrying ladders. CFC Section 102.9.
32. Fire Protection. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction. Combustible construction shall not begin until water mains and hydrants are operational and fire apparatus access roads are installed (paved). CFC Section 501.4.
33. Roof Guardrails at Interior Courts. Roof openings into interior courts that are bounded on all sides by building walls shall be protected with guardrails. The top of the guardrail shall not be less than 42 inches in height above the adjacent roof surface that can be walked on. Intermediate rails shall be designed and spaced such that a 12-inch diameter sphere cannot pass through. CFC 316.7, added by MMC V-300-2.45.

Exception: Where the roof opening is greater than 600 square feet in area.

34. Stairs to Roof (applicable to all building perimeter stairwells and other stairwells as specified by the Fire Code Official). Buildings located four or more stories in height above grade plane, except those with a roof slope greater than four units vertical in 12 units horizontal, shall be provided with stairway to the roof. CFC Section 504.3.1, added by MMC Section V-300-2.49.
35. When there are roof planes with vertical difference of more than 24", there shall be stairs for access between the different roof planes. The Fire Code Official shall determine the location for the stairs. CFC Section 102.9.
36. Access Control Devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices that would inhibit rapid fire department emergency access to the building, are installed, such devices shall be approved by the Fire Code Official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress. CFC Section 504.5, added by MMC Section V-300-2.51.
37. Fire Department emergency Key Box (Knox Box, Knox locks, Knox electric switches, etc). The Fire Code Official is authorized to require a key box(es) to be installed in an approved location(s) if necessary for life-saving or fire-fighting purposed. Quantify and location shall be as directed by the Fire Code Official. CFC Section 506.
38. Emergency responder radio coverage in buildings.
 - a. All buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communications system of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communications system. Emergency responder radio coverage systems shall be installed in accordance with the CFC Section 510.
 - b. Emergency responder radio coverage in buildings - obstruction by new building. When in the opinion of the Fire Code Official, a new structure obstructs the line of sight emergency radio communications to existing buildings or to any other location, Permittee shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure. CFC Section 510.1.1, added by MMC V-300-2.56.
 - c. The emergency radio system shall be supervised per the CFC Section 510.64. CFC Section, added by MMC V-300-2.57.
 - d. Dedicated equipment room(s) with the appropriate supporting mechanical systems, shall be provided to meet the emergency communication system needs. California Fire Code Section 102.9.

39. Fire Protection Water Supply (hydrants, on-site and public).

- a. An approved water supply (hydrants on-site and public) capable of supplying the required fire flow for fire protection shall be provided upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction. Water supply shall meet the Fire Code and the City of Milpitas Engineering Division water supply guidelines. CFC 507, Appendix B and Appendix C.

Fire flow reduction as noted in Appendix B of the Fire Code is not permitted.

- b. Private fire service mains and appurtenances shall be designed and installed in accordance with the City of Milpitas Engineering design guideline requirements and the NFPA 24. Design calculations and all the necessary design information for the water system to meet the domestic and fire flow requirements as per the City of Milpitas Engineer Division water design requirements shall be provided as part of the construction permit process. CFC Section 507.
- c. Automatic fire sprinkler design shall use a safety factor of 20% from water flow information provided by the City of Milpitas Utilities Engineering Division. CFC Section 903.3.5.6, added by MMC Section V-300-2.68.
- d. The location and quantity of hydrants will be evaluated during the construction permit process. This applies to the on-site private streets, as well as to the public streets. CFC Section 507.5.
- e. Private hydrants shall have the bottom 6 inches of the hydrant painted, with a weather resistive paint, white in color. CFC Section 507.5.7, added by MMC Section V-300-2.54.
- f. No parking is permitted in front of fire hydrants. Hydrants located on streets (public or private street) shall have an unobstructed clearance of not less than 30 feet per CA Vehicle Code 22514. Provide striping per CA Vehicle Code 22500.1. CFC Section 507.5.4.
- g. Permittee shall provide fire service water laterals for sprinkler systems.
- h. Fire service water laterals for the automatic fire sprinkler system shall meet the California Fire Code requirements Chapter 9 and the NFPA applicable Standards. CFC 912.1.
- i. The number and limitations for each sprinkler riser shall conform to the NFPA 13, Section 8.2.

- j. The location of the post indicator valve (PIV) for the fire department connection (FDC) shall be at a readily accessible location and approved by the Fire Code Official. FDC's PIV shall not be located behind parking stalls nor behind any other obstruction. Final review for location for the FDC's/PIV's will be conducted during the construction permit process. CFC Section 912.3.
 - k. Buildings equipped with an automatic fire sprinkler system and or a standpipe system installed in accordance with Section 903 and or 905 of the CA Fire Code shall have a fire hydrant within 50 feet of the fire department connections. CA Fire Code Section 507.5.1.1, added by MMC V-300-2.5.3.
 - l. FDC/PIV Signage. A metal sign with raised letters at least 1 inch in size shall be mounted on all fire department connections. Signage shall be approved by the Fire Code Official. CFC Section 912.4.
 - m. Backflow Protection. Potable water supply to the automatic sprinkler and the standpipe systems shall be protected against backflow as required by Health and Safety Code section 13114.7 and the City of Milpitas Utilities Engineering Division. CFC Section 912.5.
 - n. Service water supply laterals for the sprinkler systems and the on-site fire hydrants shall be independent of each other. NFPA 13, Chapter 23.
 - o. Automatic fire sprinkler riser location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance. California Fire Code Section 903.3.5.3, added by MMC Section V-300-2.67.
 - p. All new installations of sprinkler systems shall preclude sprinkler test and system drain water from discharging into the storm drain; provisions to direct water to the sanitary sewer or landscape or other approved means shall be provided. Sprinkler system design shall include the proposed method for drainage of sprinkler system discharge.
40. Premises Identification. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. CFC Section 505.

The Fire Dept. may require the installation of address numbers at multiple building locations. CFC Section 102.9.

41. All required addresses shall be illuminated. CFC Section 505.3, added by MMC V-300-2.52.

42. All elevators shall be sized to meet the gurney size requirements per the California Building Code Chapter 30. CFC Section 607.1.1, added by MMC Section V-300-2.59.
43. Building/Structure Requirements.
- a. The buildings shall be provided with an automatic fire sprinkler system in conformance with the NFPA 13 Standards. California Fire Code Section 903.3.
 - b. All valves controlling the water supply for the automatic sprinkler system shall be electrically supervised by a listed fire alarm control unit. CFC 904.3.
 - c. Standpipe system shall be installed in accordance with the California Fire Code Section 905.2 and NFPA 15. When stairs are provided with intermediate landings, the standpipes shall be located at the bottom floor level, at the top floor level (roof) and at all intermediate landings. CFC Section 905.4.
 - d. Portable fire extinguishers shall be selected, installed and maintained in accordance with CFC Section 906.
 - e. Group R-2. A fire alarm system and smoke alarms shall be installed in Group R-2 Occupancies as required in Sections 907.2.9.1 through 907.2.9.4. CFC Section 907.2.9, CFC Section 907.2.9.1 - Manual Fire Alarm System, CFC Section 907.2.9.2 - Smoke Alarm (in accordance with 907.2.11).
 - f. R-2 Occupancy, listed single and multiple-station smoke alarms complying with UL217 shall be installed in accordance with Sections 907.2.11.1 through 907.2.11.4 and the NFPA 72. CFC Section 907.2.11.
 - g. In Group R-2 required by Section 907 to have a fire alarm system, all dwellings units and sleeping units shall be provide with the capability to support visible alarm notification appliances in accordance with NFPA 72. CFC 907.5.2.3.4.
 - h. Fire alarm system(s) shall be zoned as per the requirements of CFC Sections 907.6.3 and 907.6.4.
 - i. Fire alarm panel (or fire alarm annunciator panel) shall be located in a readily accessible location and shall be provided with the necessary access and working clearance as required by the California Electrical Code. CFC Section 907.6.3.1.1.
 - j. Fire alarm monitoring (Approved supervising station - UL or FM approved). Fire alarm systems required by the Fire Code or by the California Building Code shall be monitored by an approved supervising station in accordance with the NFPA 72. CFC 907.6.5.

- k. Smoke control systems (when required) shall comply with the CFC Section 909.
44. Special Fire Department Requirements for Buildings over four stories. This requirement is applicable to all perimeter stairwells. CFC 914.12, as added by MMC Section V-300-2.76. All Group B office buildings and Group R, Division 1 & 2 Occupancies, each having floor used for human occupancy located more than 60 feet above the lowest level of Fire Department vehicle access, or more than 4 stories in height.
 45. Equipment cache rooms shall be located on the 1st floor above the ground floor, and every other floor thereafter, or as directed by the fire agency.
 - a. Cache rooms shall be located and accessible from within the rated stair enclosures.
 - b. Prior to the purchase of the fire department cache room equipment and/or materials, a complete list of the equipment and or materials with all necessary cut-sheets shall be submitted to the fire department for review and approval.
 - c. Due to operational needs, the fire code official reserves the right to make changes to the required equipment and or materials listed under Condition 46 below.
 46. Each equipment storage room size should be a minimum of 4' deep, full height (8' to 9'), with a door the minimum width of 43". A roll-up door can be used provided it has a 43" minimum width and unobstructed access. It shall have a power outlet to provide electricity, a light (connected to a 'timer'), be sprinklered, and be locked with a 'break-away' type lock. Fixed shelving (shelving shall be every 16" after ladder placement is determined) shall be provided in a configuration approved by the fire agency to store items that may include, but not be limited to:
 - a. 2 - Hotel Hose pack (double jacketed hose) with 100 feet of 2 ½" fire hose and a 1½" variable fog nozzle (Task Force Tip, 1 ¾") with a detachable bail, both having National Standard threads. Each pack to have 1-spanner wrench, 1- 2 ½" X 1 ½" gated wye, and 1-2 ½" X 1 ½" reducer coupling Red Head Brass 2 ½" X 1 ½" reducer
 - b. 2 - 50' banded hose rolls (North American Hose)
 - c. 2 - 2-1/2" 10' hose with one male end connector & female end connector both with National Standard threads ('Stynger')
 - d. 1-Hooligan tool (Paratech Hooligan, 11 pound)
 - e. 2 - pick head axe (Council Axe, Pick head)
 - f. 1-Little Giant Ladder, or 1- attic ladder; Fire agency to determine type.
 - g. 1- 3' Ames Tru Temper Wrecking bar,
 - h. 12 -Open Door Industries, door stops
 - i. 4 – salvage covers (blue tarps) measuring 18' X 24' with grommets every 16"
 - j. 3-Spare sprinkler heads, for each type used (these are in addition to those required in the riser room)
 - k. 1-each Sprinkler head wrench(es), one for each type of head used

- l. 1-Push type cart for use to move air bottles (type subject to Fire agency approval)
- m. 1-Rapid Intervention Pack (RIT) (location to be determined by Fire agency)
- n. 1- Evacuation Chair Stryker Model 6253 (per side)
- o. Air Bottles: Fixed SCBA bottle storage rack, number of bottles to be determined by the fire agency. A minimum capacity for 5 bottles per closet shall be provided. Individual rack slots should be positioned for horizontal storage, and be oversized to accommodate changes in bottle sizes. Product Brand and Model shall be approved by the Fire Department.

The Fire Code Official may require, an air bottle filling system shall have the fill access port located at a reasonable distance from each structure that takes into account debris fall out & collapse zones. A 'monument-type' fill station port should be located near a public roadway, not adjacent to the structure. The underground piping system, designed and installed with stainless steel welded fittings and piping, should terminate at this monument. A weather tight access panel with Knox-box key entry must also be provided. The storage system should be designed to provide enough air at 4500 psig for up to fifty 45 minute bottles, prior to augmentation by an outside air source.

- 47. Equipment maintenance, inspection, replacement and or equipment update and required certification(s) shall be the responsibility of the building owner and/or owner's association.
- 48. Fire safety during construction, alteration or demolition of the building shall meet the requirements of Chapter 33 of the California Fire Code and the Standards for Construction Site Fire Safety by "unidocs" organization (<http://www.unidocs.org>). A Construction Site Fire Safety plan shall be submitted to the Milpitas Fire Prevention Division for review and approval prior to the start of combustible construction. CFC Chapter 33.
- 49. Stationary storage battery systems having an electrolyte capacity of more than 50 gallons for flooded lead-acid, nickel cadmium and valve-regulated lead-acid, or more than 1,000 pounds of lithium-ion and lithium metal polymer, used for facility standby power, emergency power or uninterrupted power supplies shall comply with the CA Fire Code Section 608.
- 50. Notes for the electrical generator.
 - a. Fuel tank(s) located below grade shall be considered underground tanks in accordance with the California Code of Regulations, Title 23, Division 3, Chapter 16 (State Underground Tank Regulations).
 - b. If the fuel tank system(s) is not to be considered an underground tank, as defined by the underground tank regulations, provide documentation demonstrating compliance with the specified State Water Resource Control Board's Guidance letter LG-165-2.

- c. Construction drawings, for the fuel tank, shall be submitted to the City for compliance with the California Fire Code Chapters 27 and 34.
- 51. Landscape sheets. The proposed landscaping may be impacted by the comments above and the requirements for fire access, fire systems and devices (such as apparatus access, hydrants, fire service lines, fire department connections valves, etc.). The Fire Department reserves the right to relocate, delete or change the proposed landscaping when in conflict with fire systems and devices. CFC 507.5.4.
- 52. Complete plans and specifications for all aspects of fire protection systems shall be submitted to the Fire Department for review and approval prior to system installation. CFC Section 901.2.

PUBLIC ART

- 53. Prior to the issuance of a building permit, Permittee shall submit proof of meeting the Public Art Fund requirement under MMC Section XI-10-14. Permittee shall submit proof that ½ of one percent of the Building Development costs for the acquisition and installation of Publically Accessible Art has been met.

ARCHITECTURAL COMMENTS (as to all proposed structures, above and below ground)

- 54. Project architecture shall be as depicted on the Building Elevation sheets as approved by the City Council.
- 55. Applicable codes shall be 2013 CBC, CMC, CEC, CPC, Green Building Standards Code, California Energy Code and 2014 Milpitas Municipal Code.
- 56. Engineer or Architect licensed in the State of California shall prepare the plans. Structural design calculations and plans shall be wet signed and stamped when applying for a building permit.
- 57. Permittee shall apply for new building addresses prior to submitting for building permit.
- 58. All proposed future building/construction and site upgrades shall be reviewed and approved by the Planning Department to ensure building elements, siting and site improvements complement approved style of architecture.
- 59. Buildings area and height shall not exceed allowable as per 2013 CBC 503.1.
- 60. Exterior walls rating shall comply with 2013 CBC Table 602. Exterior walls shall be provided with parapets as per 2013 CBC 705.11.
- 61. Protection of openings shall comply with 2013 CBC 705.8 and Table 705.8.

- 62. Roofing material shall be as per 2013 CBC, Table 1505.1.
- 63. Two required exit doors shall be placed a distance apart equal to one-half of the diagonal dimension of the area served or one-third of the diagonal dimension in fire sprinkled buildings as per 2013 CBC 1015.2.1.
- 64. Provide exit signs when two exits are required per 2013 CBC 1011.1 and 1011.3.
- 65. Required separation in buildings with separated mixed occupancies shall be per 2013 CBC 508.

SIGN PROGRAM

- 66. All proposed signs shall meet the standards of the City Code and shall be reviewed and approved by the Building and Planning Departments prior to installation.

ACCESSIBILITY

- 67. Permittee shall provide parking for people with disabilities as per 2013 CBC 11B-208.1
- 68. Accessible parking spaces shall be dispersed and located closest to the accessible entrances as per 2013 CBC 11B-208.3.1
- 69. One in every six accessible parking spaces, but not less than one parking space shall be van accessible as per 2013 CBC sec.11B-208.2.4.
- 70. Accessibility signs shall be provided at every primary public entrance, at every major junction along or leading to an accessible route of travel and at building entrance that is accessible as per 2013CBC, section 11B-216.6.
- 71. At least one accessible route shall be provided within the site from public streets and sidewalks and public transportation stops to the accessible building entrance per CBC 11B-206.2.1. A site is defined as a parcel of land bounded by a lot line or a designated portion of a public right-of-way per CBC 202.
- 72. Curb ramps shall have detectable warnings extending 36 inches in the direction of travel as per 2013 CBC 11B-406.5.12 and 11B-705.1.2.2.
- 73. All primary entrances and required exit doors shall be accessible to people with disabilities as per 2013 CBC 11B-206.4.1.
- 74. Tactile exit signs shall be provided where exit signs as per 2013 CBC sec.1011.1 are provided as per 2013 CBC 1011.3.

- 75. Sanitary facilities shall be fully accessible to people with disabilities as per 2013 CBC, 11B-213.1.
- 76. Provide manoeuvring clearances at doors as per 2013 CBC 11B-404.2.4.
- 77. Provide minimum aisle width per 2013 CBC 11B-403.5.1 exception 4. Every aisle shall be 36" wide if serving one side and 44" min. wide if serving both sides.
- 78. Double swinging doors shall be provided with a minimum of 10" smooth surface at the bottom of the door as per 2013 CBC 11B-404.2.10.

ENGINEERING

- 79. A soil report shall be provided when applying for grading, site improvement and building permit.
- 80. Paving of parking garage shall comply with 2014 MMC section II-13-18.
- 81. All non-structural concrete flat work shall be as per 2014 Milpitas Municipal Code, section II-13-17.05.
- 82. Erosion control plan shall be submitted when applying for grading permit as per 2014 Milpitas Municipal Code section II-13-10.
- 83. Prior to issuance of building permit, all the easements including private storm drain easement through adjacent parcels shall be recorded. Permittee shall include interim erosion control provisions and schedules on the construction plans for areas, which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained through the rainy season as per 2014 Milpitas Municipal Code section II-13-11.

ELECTRICAL

- 84. All new electrical services shall be underground per 2014 Milpitas Municipal Code section II-6-2.02.
- 85. Grounding system shall comply with 2014 MMC section II-6-2.04.

PRIOR TO CONSTRUCTION PLAN SUBMITTALS

The following conditions shall be met **prior to** any detailed construction plan check submittals (Building or Engineering, except demolition and rough grade plans), unless otherwise approved by the Director of Engineering/City Engineer. City reserves the right to reject any plan check submittal if any of the following conditions are not met. **(E)**

86. Modifications. The Site Development Plan dated March 16, 2016 is subject to change during the plan check stage based upon City's previous comments and conditions stated herein.
87. Solid Waste and Recycling Handling Plan. Permittee shall submit final Solid Waste and Recycling Handling Plan based upon City's previous comments for City's review and approval by the Engineering Department. The subject Plan shall show calculations of waste generation volumes and how materials will be transferred from the waste generation areas to the trash enclosure/external collection point; demonstrate how recycling shall have a separately maintained process from garbage handling; address other requirements such as waste generation and compactor sizing, chute shut-off and property management responsibility for bin management and litter control; and procure sufficient service frequency.
88. Stormwater Control Plan. Permittee shall submit third party certified final Stormwater Control Plan (SWCP) that complies with the latest Municipal Regional Stormwater NPDES Permit, including Low Impact Development (LID) Section C3.c.i.(2)(b) measures for harvesting and reuse, infiltration, or evapo-transpiration, for City's review and approval by the Engineering Department.
89. Photometric Analysis. Permittee shall submit streetlight photometric analysis for City's review and approval by the Engineering Department along Milpitas Expressway public park and public trail area that meet the Illuminating Engineering Society of North America (IESNA), RP8, for roadway and sidewalk lighting standards and City standard design guidelines. Permittee shall provide street lighting along all street frontages consistent with City requirements, as well as pedestrian scale lights along all public and private street frontages.
90. Submittal Requirements. Permittee to ensure that all plan check submittals are in accordance with City's submittal check list for each permit type, including but not limited to, payment of permit fees and/or fee deposit at the time of the submittal.
91. Project Job Account/Fee Deposit. Permittee shall open a new PJ account as a deposit to cover the costs for Engineering Department's services for review and inspection of the project. The amount shall be at 10% of the public improvement cost estimates as prepared by the Permittee's engineer.

PRIOR TO FINAL MAP APPROVAL/RECORDATION

The following conditions shall be addressed during the final map plan check process and shall be met **prior to** any final approval/recordation (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

92. Dedication on the Final Map. Permittee shall dedicate necessary emergency vehicle access easements, public service utility easements, street easements, public access easement and other public easements deemed necessary for the project.
93. Abandonment/Quitclaim Easements. Permittee shall abandon/quit claim existing easements that are in conflict with or unnecessary for the project.
94. Easements on the Final Map. Permittee shall depict all existing easements to remain based upon current (less than 3 months old) preliminary title report and depict new easements on the final map.
95. Concurrent Off-site Plan Reviews. Permittee shall submit separate off-site improvement plans for City's review and approval by the Engineering Department.
96. Utility Company Approval. Permittee shall obtain approval letters from utility companies (PG&E, AT&T, AT&T Broadband) for abandonment of existing and dedication of new public service utilities easements.
97. Subdivision Improvement Agreement and Securities. Permittee shall execute a Subdivision Improvement Agreement and provide improvement securities in accordance with MMC Title XI, Section 17, and submit all other supplemental documents as stipulated in the Improvement Agreement (such as certificate of insurance).
98. Annexation to the Community Facilities District. Permittee shall submit an executed petition to annex the subject property to the Community Facilities District (CFD) 2008-1, and agree to pay the special taxes levied by the CFD 2008-1 for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with any building permit issuance. Permittee shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. This condition of approval is nonseverable from the Permit and invalidation or limitation of this condition invalidates the Permit, condition 9 notwithstanding. **(E)**
99. Homeowners Association (HOA). If a Homeowners Association will be created, Permittee shall submit a preliminary draft of the proposed conditions, covenants, and restrictions (CC&Rs) for City's review and approval. Membership of the HOA shall include all owners of the residential units. The HOA shall be responsible for the maintenance of the landscaping, walls, buildings, private street lights, common area and private streets, and shall have assessment power. The HOA shall manage and maintain the onsite water, recycled water, irrigation, storm, water quality treatment, and sewer systems and implement the Solid Waste Handling Plan. The information shall be clearly included in the CC&Rs to be recorded with the Santa Clara Recorder's Office.

PRIOR TO OFF-SITE PLAN APPROVAL/ENCROACHMENT PERMIT ISSUANCE

The following conditions shall be addressed as part of the off-site improvement plan review and shall be met **prior to** encroachment permit issuance, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

100. Public Improvement Design Standards. All public improvements shall be designed and constructed in accordance with current Milpitas design guidelines, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>), standard drawings and specifications, (<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/plans-maps-specifications/>) and Americans with Disabilities Act (ADA) requirements where applicable.
101. Sanitary Sewer Calculations. Permittee shall submit a completed “Sewer Needs Questionnaire” form and sanitary sewer calculations to justify lateral size design and allocation of discharge for each of the lateral.
102. Storm Drain Design. Permittee shall submit storm drain hydrology and hydraulic calculations based upon a 10-year storm event to justify the size of the storm drain lateral flowing full, without surcharging the main line pipe, and to be reviewed and approved by the Engineering Department.
103. Domestic Water and Fire Service Calculations. Permittee shall submit potable water and fire service calculations to confirm adequacy of lateral size, pressure and flow, to be reviewed and approved by the Engineering Department and Fire Department. Hydraulic modeling analysis by the City and paid by the Permittee may be required as needed. The project site shall be served by the SCVWD Zone 2.
104. Utility Protection. All existing public utilities, to the extent any are present on the project site, shall be protected in place, or if necessary, relocated as approved by the City Engineer. No permanent structure is permitted within any City easement and no trees or deep-rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas.
105. Specific Improvements. In addition to standard public improvements required under MMC Title XI, Chapter 1, Section 7, Permittee shall install other specific improvements listed below including incidental improvements as required by the City as part of the encroachment permit.
 - a. Installation of separate water service taps and separate meters for each of the following services: residential, irrigation, and fire.
 - b. Installation of sanitary sewer manholes right behind the right-of-way and at the main for the new lateral.

- c. Installation of new curb, gutter and sidewalk along the project frontage with extension to match the existing sidewalk fronting the Harmony project (located at Building 13, also known as 1848-1884 Snell Place, Milpitas, CA).
 - d. Installation of Type II slurry seal along the project frontage to the median islands.
106. Abandonment of Existing City Utilities. Permittee shall cap, abandon or remove any unused existing public utilities based upon City's Abandonment Notes and to the City's satisfaction.
 107. Water Service Agreement. Permittee shall complete a water service agreement to obtain water service.
 108. Encroachment Permit. Prior to any work in the public right-of-way and/or public easement, Permittee shall obtain an encroachment permit with insurance requirements for all public improvements including a traffic control plan per the latest California Manual on Uniform Traffic Control Devices (MUTCD) standards to be reviewed and approved by the Engineering Department.
 109. Other Agency Approvals. Permittee shall obtain permits from other affected agencies and private parties, including but not limited to, Pacific Gas and Electric, AT&T, Comcast, Santa Clara Valley Water District, Santa Clara County Roads and Airport Department, and Southern Pacific Railroad Company. Copies of any approvals or permits shall be submitted to the Engineering Department.

PRIOR TO BUILDING PERMIT ISSUANCE

The following conditions shall be addressed during the building plan check process and shall be met **prior to** any building permit issuance (except demolition permit and rough grade permit), unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

110. Final Map Recordation. Permittee shall record the final map.
111. Bioretention Location. Permittee shall verify that proposed bioretention area along frontage, within public right-of-way easement, has been approved by the County of Santa Clara
112. Stormwater Facility Operation & Maintenance Plan. Permittee shall incorporate design details into applicable construction plans in accordance with City approved Storm Water Control Plan (SWCP). Permittee shall also submit a Stormwater Facility Operation & Maintenance Plan that describes operation and maintenance procedures needed to ensure that treatment Best Management Practices (BMPs) and other storm water control measures continue to work as intended and do not create a nuisance (including vector control).

113. Water Supply and Force Majeure. The City reserves the right to suspend the issuance of building permits in case of an emergency declaration of water supply in the case of a major catastrophic event that restricts City's assurance to provide water supply.
114. Water Efficient Landscapes. Permittee shall comply with Milpitas Municipal Code Title VIII, Chapter 5 Water Efficient Landscapes for landscape design, including but not limited to, providing separate water meters for domestic water service and irrigation service and providing applicable landscape documentation package.
115. Dewatering. If dewatering is needed during construction, Permittee shall obtain a Short-Term Industrial Wastewater Permit from the San Jose/Santa Clara Water Pollution Control Plant for discharging the groundwater to a sanitary sewer system.
116. Solid Waste and Recycling Facility Design. Permittee shall comply with all applicable City design guidelines/details associated with haul route, turning radius, vertical and horizontal clearance, trash enclosure, staging area, storage area, etc. Guidelines can be found at:
<http://www.ci.milpitas.ca.gov/milpitas/departments/engineering/design-guidelines/>
117. Recycling Report Prior to Demolition Permit Issuance. Permittee shall submit Part I of a Recycling Report on business letterhead to the Building Department, for forwarding to the Engineering Department for review and approval. The report shall describe the following resource recovery activities:
- a. What materials will be salvaged
 - b. How materials will be processed during demolition
 - c. Intended locations or businesses for reuse or recycling
 - d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.
- Permittee shall make every effort to salvage materials for reuse and recycling, and shall comply with the City's demolition and construction debris recycling ordinance.
118. Recycling Report Prior to Building Permit Issuance. Permittee shall submit Part II of the Recycling Report to the Building Department, for forwarding to the Engineering Department. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of "end dumps." Actual reuse, recycling and disposal tonnage amounts (and estimates for "end dumps") shall be submitted to the Building Department for approval by the Engineering Department prior to inspection by the Building Department.
119. Development Fees. Permittee shall pay the following development fees. The information listed in items "a" through "e" are based upon current fee rates;

however, those fee rates are subject to change. The exact fee amount shall be determined at the time of building permit fee payment.

- a. Storm water connection fee at \$16,771/acre for residential
- b. Water connection fee at \$1,164/unit for residential based upon increased water usage
- c. Sewer connection fee at \$1,406/unit for residential based upon increased water usage
- d. 2.5% of applicable fees in accordance with City Resolution No. 7590 as Permitting Automation Fee.
- e. Calaveras Boulevard Widening Traffic Impact Fee at \$275/unit for residential subject to adjustment by ENR CCI at the time of payment.

120. Based on the proposal of 72 units at the site, the project is required to dedicate 0.63 acres of parkland, equivalent to \$1,749,314. Permittee shall satisfy this obligation through the construction of 0.30 acres of private recreational space and the payment of \$912,962 in lieu of dedicating any further real property.

DURING CONSTRUCTION

The following conditions shall be complied with at all times **during** the construction phase of the project, unless otherwise approved by the Director of Engineering/City Engineer. **(E)**

121. Prohibition of Potable Water Usage. Permittee shall use recycled water for construction purposes, including dust control and compaction. Permittee shall comply with MMC VIII-6-5.00 and 6-6.00 where potable water usage is prohibited, unless otherwise approved by the City Council.
122. Construction Staging and Employee Parking. Permittee shall place all construction related materials, equipment, and arrange construction workers parking on-site and not located in the public right-of-ways or public easements.

PRIOR TO FIRST OCCUPANCY

The following conditions shall be met **prior to** first building occupancy on either lot, unless otherwise approved the Director of Engineering/City Engineer.

123. Completion of Public Improvements. Permittee shall complete all public improvements, including but not limited to, those located along Montague Expressway as shown on City approved plans.
124. Stormwater Management Facilities O&M Agreement. Permittee shall execute and record a Stormwater Management Facilities Operation and Maintenance (O&M) Agreement associated with the SWCP O&M Plan, including perpetual maintenance of treatment areas/units, as reviewed and accepted by the Engineering Department.

125. Landscape Certificate. Permittee shall submit a Certificate of Substantial Completion that complies with the Milpitas Municipal Code Water Efficient Landscapes ordinance.
126. Record Drawings. Permittee shall submit record drawings in pdf format for City records.
127. Maintenance Agreement Along Public Right-of-Way. Permittee shall provide the City with a copy of a fully executed Maintenance Agreement with the County of Santa Clara (Roads and Airports Department) regarding sidewalk and other improvements within that portion of Montague Expressway right-of-way along the project frontage.
128. Private Job (PJ) Balance. Permittee shall pay for any remaining balance from the Private Job deposit.

ENVIRONMENTAL IMPACT REPORT (EIR) MITIGATION MEASURES

The following are the applicable mitigation measures from the certified Midtown Specific Plan EIR. The following mitigation measures shall be complied with in accordance with the adopted Mitigation Monitoring and Reporting Program approved by the Planning Commission in Resolution 16-028 and attached hereto and incorporated herein as Attachment A to these the Conditions of Approval.

HAZARDOUS MATERIALS

129. ***Mitigation Measure HazMat-1:*** A Phase I Environmental Site Assessment (ESA) shall be conducted in accordance with American Society for Testing and Materials (ASTM) guidelines prior to the approval of development that would involve soil disturbance within 100 feet of any parcel that has been identified on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, or which has had previous land uses associated with hazardous materials (e.g., industrial sites, gas stations, etc.). Additional investigation may not be necessary for sites have no record of hazardous materials, past history of land uses associated with hazardous materials, adjacency to such sites, nor surface indications of possible hazardous materials conditions. Figure 3.3-1 located in the Midtown Milpitas Specific Plan EIR, dated October 2001, provides the general location of reported hazardous materials sites as of August 2000. For more detail, refer to the Environmental Records Search, on file with the Planning Division (EDR 2000).

The Phase I ESA will include the findings of a site reconnaissance and investigation of prior uses of the property that could have resulted in contamination. If a significant likelihood of contamination is revealed by the Phase I ESA, a Phase II and/or III assessment may be required, which would involve soil

and/or water quality sampling and could result in remediation requirements in accordance with State and Federal regulations. Implementation of this measure will ensure that the impact is reduced to a less-than-significant level.

UTILITIES

130. ***Mitigation Measure Util-1:*** The following mitigation measures shall be implemented to ensure that wastewater discharge and treatment capacities are available for planned development:
- a. The City of Milpitas shall continue to participate in WPCP Action Plan projects to reduce existing wastewater flows, such as low flow toilet installation programs and water conservation programs. The City of Milpitas shall continue to participate in the South Bay Water Recycling Program, and pursue additional recycled water opportunities whenever available.
 - b. The City shall continue to monitor for adequate discharge capacity to serve existing and approved development in the city for all development projects, including remodels. The Planning Division shall continue to coordinate with the Utilities Division and require a sewer need assessment to be completed by the developer prior to any development approvals. The Utilities Division shall continue to keep a running estimate of how much capacity remains citywide to aid in this analysis.
 - c. The City of Milpitas shall complete the Sewer-Water Master Plan Update (Winter 2002) and implement the feasible recommended infrastructure improvements, including infiltration and inflow reduction measures. Upon completion of the Sewer Master Plan, the City of Milpitas shall review the treatment capacity needs and seek additional capacity if warranted. If the available treatment capacity has been reached, the City of Milpitas shall not issue the building permit until additional capacity is acquired.

With the implementation of these mitigation measure, adequate wastewater treatment capacity would be ensured, and this impact would be considered less-than-significant.

BIOLOGICAL RESOURCES

131. ***Mitigation Measure Bio-1:*** Undeveloped areas proposed for development during the nesting season (April 15 to July 15) shall be surveyed for burrowing owls. The survey must follow the California Department of Fish and Game (now Department of Fish and Wildlife) protocol. The survey report shall be submitted to Milpitas Planning Division for review and approval. If owls are observed during the surveys, or if a burrowing owl nest has been documented on the site within the last three years, a burrowing owl habitat map and mitigation plan must be prepared by a

qualified ornithologist and submitted to the City for approval. Implementing this mitigation measure would reduce potential impacts to burrowing owls to a less-than-significant level.

132. ***Mitigation Measure Bio-2:*** Most hawks build bulky nests of twigs, bark, and leaves high in trees. Red-shouldered hawks (the species observed in the project area) nest in deciduous or coniferous trees, usually 20-60 feet above the ground. The birds construct well-made cupped nests of sticks and twigs, lined with bark, mosses, leaves, feathers and down. A red-shouldered hawk nest is approximately 2 feet wide and 1 foot deep. For proposed projects that would remove any large tree with a potential raptor nest during the raptor-nesting season (February 1 to August 31), the following mitigation measures shall be implemented.
- a. If construction or large tree (i.e., 20 feet or more in height) removal is proposed during the raptor-nesting season (February 1 to August 31), Planning Division staff shall conduct a site visit to determine whether any nest structure is visible in the trees to be removed.
 - b. If a nest is observed, a focused survey shall be conducted by a qualified biologist during the nesting season to identify if they are active. The survey shall be conducted no less than 14 days and no more than 30 days prior to the beginning of construction or tree removal.
 - c. If nesting raptors are found during the focused survey, no construction or tree removal will occur within 500 feet of an active nest (or an alternative distance deemed appropriate by the California Department of Fish and Game (now California Department of Fish and Wildlife), depending on the existing degree of disturbance in the vicinity of the nest) until the young have fledged (as determined by a qualified biologist). If next trees are unavoidable, they shall be removed during the non-breeding season.

Implementing these mitigation measures would reduce potential impacts to raptors to a less-than-significant level.

133. ***Mitigation Measure Bio-3:*** If a project in the planning area has the potential to result in discharge of dredged or fill material into Waters of the United States, including wetlands, the following measures shall be implemented. Waterways in the planning area that could be Waters of the United States are Berryessa Creek, Lower Wrigley Ford Creek, and East Penitencia Creek.
- a. Prior to implementation of a project in the vicinity of known waterways in the planning area, qualified biologists shall make a determination as to whether Waters of the United States, including jurisdictional wetlands, are present in the development area. If no Waters of the United States, including jurisdictional

wetlands, would be filled or degraded as a result of the proposed project, no further mitigation will be required.

- b. If Waters of the United States would be filled or degraded as a result of the proposed project, authorization for the fills shall be secured from USACE via the Section 404 permitting process.
- c. The acreage of Waters of the United States would be filled or degraded as result or rehabilitated on a “no-net-loss” basis in accordance with USACE regulations. Habitat restoration, rehabilitation and/or replacement shall be at a location and by methods agreeable to USACE.
- d. Measures to minimize erosion and runoff into drainage channels shall be included in all drainage plans and implemented during construction adjacent to creeks.

Implementing these mitigation measures would reduce potential impacts to Waters of the United States, including wetlands, to a less-than-significant level.

CULTURAL RESOURCES

134. ***Mitigation Measure Cult-1:*** The following mitigation measures shall be implemented to ensure that substantial adverse changes do not occur to historical resources within the planning area. These measures shall be implemented when modification or demolition is proposed for any of the sites identified on Figure 3.8-1 of the Midtown Milpitas Specific Plan EIR, dated October 2001

- a. Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of the historic resource would be conducted in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstruction Historic Buildings (1995), Weeks and Grimmer, the project’s impact on the historic resource shall be considered mitigated to a less-than-significant level. This is the preferred mitigation approach.
- b. If removal or modification of any potentially significant resource is proposed and is not consistent with the Standards described in (a), the resource shall be evaluated for its integrity and structural values pursuant to the California Register criteria by a licensed architect specialized in historic buildings. This shall occur prior to the approval of any proposed modification or demolition.
- c. If these resources are determined ineligible for the California Register of Historic Resources, no further mitigation is required. However, if a resource is listed or determined eligible for the California Register of Historic Resources, documentation of the structure’s architectural values by a licensed architect specialized in historic buildings shall be completed prior to demolition or alteration. At least one additional mitigation measure also will be implemented

at the recommendation of the architect in consultation with the City of Milpitas; this might include on-site interpretation of the lost resource or documentation of the resource to Historic American Buildings Survey/Historic American Engineering Recordation (HABS/HAER) standards.

Implementation of these mitigation measures would reduce the potential impacts to historic resources to a less-than-significant level.

135. ***Mitigation Measure Cult-2:*** When proposed for development, the planned bicycle and pedestrian improvements in the vicinity of the Penitencia Creek and development of vacant lands in the vicinity of Penitencia Creek (Within 100 feet of the creek bank) shall be reviewed for their potential to adversely affect archaeological site CA-SCL-38. Mitigation, including site avoidance, data recovery and/or construction monitoring may be necessary, depending on the nature of the site, and the project's potential impact to it. A qualified archaeologist shall make project-specific recommendations, which shall be implemented prior to the development of the path or construction on these vacant lands.

Implementation of this mitigation measure would reduce this potential impact to a less-than-significant level.

136. ***Mitigation Measure Cult-3:*** Project developers shall be required to implement provisions for historical or unique archaeological resources accidentally discovered during construction in accordance with CEQA Guidelines Section 15064.5 (e)(f). This requirement shall be specified in all building and grading permits. These provisions require the immediate evaluation of the find by a qualified archaeologist or historic archaeologist meeting the Secretary of the Interior's Professional Qualification Standards. If the find is determined to be a historical or unique archaeological resource, funding will be made available by the project developer and a schedule identified for implementing avoidance measures or appropriate mitigation. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place. Implementation of this mitigation measure would reduce this potential impact to a less-than-significant level.

137. ***Mitigation Measure Cult-4:*** In the event that human remains are encountered, City planning staff will be contacted and excavation or disturbance activities at the site or at any nearby area reasonably suspected to overlie adjacent human will be halted. This requirement shall be specified in all building and grading permits. The Santa Clara County coroner will be contacted and appropriate measures implemented. These actions would be consistent with the State Health and Safety Code Section 7050.5, which prohibits disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery. If the County coroner

determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be most likely deceased from the deceased Native American.

TRAFFIC AND CIRCULATION

138. ***Mitigation Measure Traffic-1:*** With implementation of the Specific Plan the City shall implement the improvements summarized in Table 3.9-13 of the Midtown Milpitas Specific Plan EIR, dated October 2001. Consistent with Policy 4.8 of the Draft midtown Milpitas Specific Plan. Historically the City has required development to pay its pro-rata share of improvement costs on a project by project basis. The City shall continue to use this approach or identify alternative funding mechanisms such as RDA funds or General Funds prior to development in midtown. Improvements may be phased, according to actual development and demonstrated need for the improvements. With the implementation of the traffic improvements specified in Section 3.9-13 of the Midtown Specific Plan EIR, six of the intersection impacts would be mitigated to a less than significant level. However, impacts at eight of the intersections would still be considered significant. Feasible mitigation measures are not available. Thus these remaining are considered significant and unavoidable.
139. ***Mitigation Measure Traffic-2:*** According to VTA policy direction, mitigation measure for regional freeway impacts is participation in the Countywide Deficiency Plan (CDP) prepared by the VTA, which would require additional impact fees to provide the regional roadway improvements, including freeways. However, the CDP has not received final approval. Thus, the mitigation of regional of impacts to freeways operations cannot be guaranteed, as the City of Milpitas does not have legal authority to mitigate freeway impacts. For this reason, the contribution of development under the Milpitas Specific Plan to unacceptable freeway operations is considered a significant and unavoidable impact.
140. ***Mitigation Measure Traffic-3:*** The City of Milpitas has taken on the administration and construction of widening Montague Expressway between Great Mall Parkway-Capitol Avenue and I-680. This widening includes the addition of a fourth through lane in each direction, one of which will be a dedicated HOV lane during the AM and PM peak commute periods. Although this improvement will not reduce the projected impacts to a less-than-significant level, it will reduce overall congestion and improve traffic flow in the Midtown Area.

AIR QUALITY

141. ***Mitigation Measure Air-1:*** The following basic control measures are required to be implemented at all construction sites in the Midtown area. These measures shall be incorporated into construction contracts for projects in the Midtown area.
- a. Water all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with no toxic stabilizers or dust palliatives.
 - b. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
 - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - d. Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
 - e. Sweep streets daily (preferably with water sweepers) if visible soil material is carried on to adjacent public streets.
 - f. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
 - g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
 - h. Limit traffic speeds on unpaved roads to 15 miles per hour.
 - i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - j. Replant vegetation in disturbed areas as quickly as possible.
 - k. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts.

After implementation of the listed mitigation measures, construction-related air emissions would be less-than-significant

142. ***Mitigation Measure Air-2:*** The Specific Plan contains Policies directed at reducing vehicle miles traveled. The Specific Plan encourages a compatible mixture of land uses, provides for a land-use mix that supports major transit facilities, locates higher density development around hubs and commercial centers, provides for the continuation of pedestrian-oriented retail development, and provides pedestrian connections between the transit stations and important destinations.

Though these policies would help to reduce emissions, they would not reduce them to a level of insignificance. Due to the intensity of the development proposed, the proposed Specific Plan could not be feasibly developed without an increase in air emissions above the significance thresholds of 15 tons per year for RO, NO_x, and PM₁₀. This impact is considered significant and unavoidable.

143. ***Mitigation Measure Air-3:*** Due to the intensity of the development proposed, the Specific Plan could not be feasibly developed without causing an increase in regional emissions, and all feasible mitigation measures have been incorporated

into the Specific Plan as policies (e.g., policies directed at encouraging non-automotive transportation). This impact is considered significant and unavoidable.

Notes:

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(PD) = Police

ATTACHMENT

Attachment A: Mitigation and Monitoring Plan prepared for the Midtown Specific Plan EIR

NOTICE OF RIGHT TO PROTEST

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), began on date of adoption of this resolution. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

AGREEMENT

Permittee/Property Owner

The undersigned agrees to each and every condition of approval and acknowledges the NOTICE OF RIGHT TO PROTEST and hereby agrees to use the project property on the terms and conditions set forth in this resolution.

Dated: _____

Signature

Printed Name of Permittee/Property Owner: _____